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**FILED**  
DISTRICT COURT OF GUAM

JUN 19 2007

MARY L.M. MORAN  
CLERK OF COURT

4 *Attorneys for Defendant*

7 IN THE DISTRICT COURT OF GUAM

8 UNITED STATES OF AMERICA,

9 Plaintiff,

10 vs.

11 BRIAN ELM,

12 Defendant.

CRIMINAL CASE NO. 07-00026

DEFENDANT'S TRIAL EXHIBITS

14 The exhibits which Defendant intends to introduce during the trial of the above-captioned  
15 action are described below. Additionally, Defendant reserves the right to use any exhibits on the  
16 United States' exhibit list.

17 A. Original Indictment in Criminal Case No. 05-00053 (still awaiting production from  
18 the United States).

19 B. Testimony of Brian William Elm (with pages 45 through 48 intentionally omitted).

20 Respectfully submitted this 19<sup>th</sup> day of June, 2007.

21 **TEKER TORRES & TEKER, P.C.**

22 By

JOSEPH C. RAZZANO, ESQ.

*Attorneys for Defendant*

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**DEFENDANT, BRIAN ELM'S EXHIBIT LIST**

<b><u>Exhibit</u></b>	<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Identified</u></b>	<b><u>Admitted</u></b>
<b>A</b>		Original Indictment, Criminal Case No. 05-00053		
<b>B</b>		Testimony of Brian William Elm, Criminal Case No. 05-00053 (with pages 45 through 48 omitted)		

# EXHIBIT “A”

# EXHIBIT “B”

IN THE DISTRICT COURT OF GUAM  
TERRITORY OF GUAM

\* \* \*

**FILED**  
DISTRICT COURT OF GUAM

OCT 24 2006

MARY L.M. MORAN  
CLERK OF COURT

UNITED STATES OF AMERICA,	)	COURT OF APPEALS
	)	CASE NO. 06-
Plaintiff,	)	
	)	
vs.	)	CRIMINAL CASE
	)	NO. CR05-00053
BRIAN WILLIAM ELM,	)	
	)	
Defendant.	)	

TRANSCRIPT OF PROCEEDINGS  
BEFORE

THE HONORABLE JOHN C. COUGHENOUR  
Designated District Judge

**DEFENDANT'S TRIAL TESTIMONY**

MONDAY, MAY 15, 2006

US Attorney's Office  
Districts of Guam & NM

OCT 25 2006  
Time  
Receiving name  
Date keyed in Dbase  
Entered into Dbase by

Wanda M. Miles  
Official Court Reporter

GOVERNMENT  
EXHIBIT  
2

**APPEARANCES:**

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LAW OFFICES OF VAN DE VELD,  
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Hagatna, Guam 96910

---

**I-N-D-E-X****DEFENSE WITNESS****DIRECT****CROSS****REDIRECT**

Brian W. Elm

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**E-X-H-I-B-I-T-S****GOVERNMENT EXHIBIT****INTRODUCED/ADMITTED**

7 - Phone records

16/24/54

8 - Phone &amp; deposit records

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14 - Phone &amp; deposit records

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13 - Phone &amp; deposit records

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12 - Phone &amp; deposit records

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11 - Phone &amp; deposit records

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9 - phone &amp; deposit records

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10 - phone &amp; deposit records

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31 - (Court documents relating

41/68

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32 - (to Defendant B. Elms'

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33 - (felony convictions

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34 - Plea agreement

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26 - Phone records

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4 - Phone records

62/67

28 - phone records

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HAGATNA, GUAM; MONDAY, MAY 15, 2006

\* \* \*

(BRIAN WILLIAM ELM, the defendant herein, was first duly sworn and testified as follows:)

THE CLERK: Take the stand.

State your full name and spell your last name.

THE DEFENDANT: Brian William Elm, E-L-M.

DIRECT EXAMINATION

BY MR. VAN DE VELD:

Q. Brian, why don't we first start off, I want to talk to you about your work history. Can you please explain to the jury what your work history was; let's start with the beginning of January of 2004.

A. The beginning of January 2004, uhm, I worked at -- or I wasn't working at the time. I think it's January -- July I worked at Marriott, and I worked there for approximately two weeks. And after I worked there I went to work at Okura Hotel, from August to December of 2004. And off and on I'll be working down at the office, Reaction, Eric's father's, uh, his -- the office they opened down there, in Agana.

Q. And when did that start, that you would work on and off at the Reaction office?

A. Well, basically, Eric would just ask me to help him out, and on occasions, but then I started



1 working there like on a full time basis on January to  
2 February of 2005.

3 Q. Did you report all changes in your employment  
4 status to anyone?

5 A. Yes, I did.

6 Q. Who did you report them to?

7 A. To my probation officer.

8 Q. When did you start that pretrial probation  
9 monitoring?

10 A. I believe it's in September of 2003.

11 Q. What caused that reporting to start?

12 A. I got arrested for possession, and possession  
13 of firearm.

14 Q. You said you got arrested for possession and  
15 possession of a firearm.

16 A. Yes.

17 Q. When you say you got arrested for possession,  
18 what do you mean?

19 A. They had found a, uh, straws in a backpack I  
20 was carrying, and a pipe.

21 Q. Okay. And what was inside the straws?

22 A. Uh, residue, from meth. Meth residue.

23 Q. And whose backpack was it?

24 A. It was my backpack.

25 Q. And do you know how long those items had been

1 in your backpack?

2 A. Uhm, maybe two days.

3 Q. So at that time you had been using; is that  
4 correct?

5 A. Yes.

6 Q. Okay. Following your arrest, when was the  
7 next time you used ice?

8 A. I didn't use ice after that.

9 Q. Now, in 2003, what kind of a vehicle did you  
10 own?

11 A. I owned a Yamaha, '01 model, it was a YZF600R.

12 Q. Okay. Was that a car or a motorcycle?

13 A. I owned a 1998 Nissan Altima before that; in  
14 early 2003, I sold it and I got the Yamaha motorcycle.

15 Q. Okay. Do you recall how much you sold the  
16 Nissan Altima for?

17 A. \$8,000.

18 Q. And who did you sell it to?

19 A. Vince Cruz.

20 Q. Is that Vince Cruz from Merizo?

21 A. No, he was from Dededo.

22 Q. And you said you sold it for \$8,000. How much  
23 did you buy the motorcycle for?

24 A. 5,000.

25 Q. So what did you do with the difference?

1 A. I just saved it.

2 Q. Did there come a period of time when you  
3 acquired a different vehicle?

4 A. Yes, in early 2004 I had sold my Yamaha, the  
5 one I bought for 5,000, I sold it for 4,000 to a guy  
6 named Jess from Barrigada.

7 Q. You sold the motorcycle for 4,000, and what  
8 did you buy?

9 A. I bought a, the Suzuki motorcycle from Eric  
10 Aponik for 4,000, but I gave his dad 1500 for the bike  
11 because Eric I believe owed his dad money, so, I gave  
12 him \$1500, and I used the remaining to buy rims for  
13 Keomi's runner, 4Runner.

14 Q. So that I understand this correctly, are you  
15 saying you gave 4,000 to Eric, a \$1,500 to his father,  
16 and then you used the difference?

17 A. No, I gave -- they had -- we agreed that I was  
18 going to buy the bike for 4,000, but I gave, instead I  
19 gave them 1500 and I asked them if I can work off the  
20 difference, and the remaining I used to purchase the  
21 wheels for the Runner, Keomi's Runner.

22 Q. Did there come a time when you bought a  
23 different vehicle?

24 A. Yes.

25 Q. When was that?

1 A. Uhm, I believe it was either late 2004 or  
2 early 2005.

3 Q. What did you buy?

4 A. I had purchased a -- I sold my, the motorcycle  
5 I bought from Eric to Chris for 7500, and I bought a  
6 Toyota, white Toyota 4Runner which I purchased for  
7 \$6,000.

8 Q. So, you were able to sell the motorcycle that  
9 you had acquired from Eric for a profit; is that  
10 correct?

11 A. Yes, that's correct.

12 Q. And then you used part of the money that you  
13 received to buy the white 4Runner?

14 A. Yes.

15 Q. Okay. What did you do with the additional  
16 money that you had from the sale of the motorcycle  
17 after buying the 4Runner?

18 A. I don't remember what I did.

19 Q. Okay. Did you make any improvements to the  
20 white 4Runner?

21 A. Oh, the rims that were on Keomi's Runner, the  
22 stock wheels, I put it on the white 4Runner.

23 Q. Okay. So, after you had purchased the other  
24 rims for Keomi's 4Runner --

25 A. Yes.

1 Q. -- that were the previous ones that were on  
2 the car at the time --

3 A. Yes.

4 Q. -- that were left over, is that what you're  
5 saying?

6 A. Yes.

7 Q. And you took those rims and you put them on --

8 A. The white 4Runner.

9 Q. -- the white 4Runner that you purchased?

10 A. Yes.

11 Q. Did you do anything else to improve the white  
12 4Runner?

13 A. Yes, I had purchased sounds.

14 Q. Where did you buy the sound system?

15 A. Uttam's.

16 Q. Do you remember how much you spent?

17 A. About a thousand some; don't remember.

18 Q. How long did you own the white 4Runner?

19 A. Less than a month.

20 Q. Who did you sell it to?

21 A. I sold it to Eric Aponik.

22 Q. Why did you sell it to him?

23 A. I wanted to purchase his cousin's motorcycle.

24 Q. How much did you sell it to Eric for?

25 A. 7,500.

1 Q. Were you paid in cash?

2 A. Yes. He actually gave me six thousand and  
3 said he would pay me the rest later.

4 Q. How much did you buy the motorcycle for?

5 A. I believe it was seven, or seven -- 7500.

6 Q. And who did you buy that from?

7 A. John Dudkiewicz, Eric's cousin.

8 Q. When you started working on and off at  
9 Reaction Supply Company, how much were you earning?

10 A. It varies, it depended on how -- how long I  
11 stayed at work. About, they would pay me \$10 an hour.

12 Q. Was that both before you started working there  
13 regularly, or just during the period of time that you  
14 were on and off?

15 A. During the period of time when I was off and  
16 off.

17 Q. How much did you make when you started working  
18 there in January of 2005?

19 A. About four to five hundred dollars a week.

20 Q. Do you know John Vincent Cruz from Merizo?

21 A. Yes, I do.

22 Q. How do you know John?

23 A. Uhm, like barbecues I go to in Merizo, or my  
24 cousin Katrina, that's her pare.

25 Q. How long have you known John?

1 A. About five, five years, six years.

2 Q. Did there come a time when you -- you said you  
3 used to see him when you would go to barbecues. Did  
4 there come a time when you became more familiar with  
5 Mr. Cruz?

6 A. No.

7 Q. When you worked at Reaction Supply, how often  
8 would you see Mr. Cruz at the premises of Reaction  
9 Supply?

10 A. Uhm, I saw him there a couple of times, maybe  
11 two or three times.

12 Q. And when you saw him there, what was occurring  
13 that caused him to be there, that you were aware of?

14 A. He would just be talking to Eric Aponik.

15 Q. Do you know Jonathan Canovas?

16 A. Yes.

17 Q. How do you know Johathan Canovas?

18 A. My cousin Derek used to bring him around when  
19 we had barbecues and stuff like that, family  
20 gatherings.

21 Q. Did you come to know him better over some  
22 period of time?

23 A. Yes.

24 Q. Can you explain that?

25 A. Well, sometimes he would call my phone to, to

1 try and get ahold of Eric, and he would just start  
2 talking to me about stuff.

3 Q. When did he start calling you trying to get  
4 ahold of Eric through you?

5 A. Like in -- I'm not sure.

6 Q. You've seen some of the phone records that the  
7 government has provided in this case, is that correct?

8 A. Yes.

9 Q. And you've seen that some of the phone calls  
10 are like six minutes, some are up to 15 minutes?

11 A. Yes.

12 Q. What kinds of things would he talk to you  
13 about in those phone calls?

14 A. Well, most of the time he'll be out in a bar  
15 or in a casino gambling and he'll just tell me about,  
16 you know, what he's doing. And he used to tell me that  
17 his friends just leave him and he's lost, he don't know  
18 where he's at. Calls me when he walks the strip in  
19 Vegas.

20 Q. And what did he talk to you about?

21 A. Just that his friends left him with some  
22 people, and he's trying to look for them.

23 Q. Did you ever talk to him about drugs?

24 A. No.

25 Q. So, if he calls you looking for Eric, what



1 would you do?

2 A. I would, uh, try and get ahold of Eric for  
3 him, and I'll tell him just call me back.

4 Q. You'd tell who to call you back?

5 A. Jonathan Canovas.

6 Q. Did you know why he was trying to get ahold of  
7 Eric?

8 A. No.

9 Q. The cell phone that Keomi got for you from  
10 i-Connect, were you the only one who used that phone? .

11 A. No.

12 Q. Who else would use it?

13 A. Sometimes Eric would use the phone.

14 Q. Why would Eric use your phone at times?

15 A. His batteries are weak on his phone.

16 Q. So, his batteries are weak. I'm not -- I  
17 don't understand that.

18 A. Well, sometimes his phone is dead.

19 Q. So his phone wouldn't be usable?

20 A. Yes.

21 Q. So he would use your phone, is that what  
22 you're saying?

23 A. Yes.

24 (Pause to gather up exhibits.)

25 MR. VAN DE VELD: Your Honor, may I approach

1 the witness?

2 THE COURT: Yes.

3 MR. VAN DE VELD: Thank you.

4 Q. First I'm showing you what's marked as Exhibit  
5 1; and do you recognize what's depicted in Exhibit 1?

6 A. No, I don't.

7 Q. And have you ever seen a package similar to  
8 that?

9 A. No, I don't.

10 Q. Now, I'm now showing you what's marked as  
11 Government Exhibit No. 5, ask if you can take a look at  
12 that.

13 A. (Witness complies.)

14 Q. Those are deposit slips for the Bank of Guam;  
15 have you ever seen any of those before?

16 A. No.

17 Q. Have you ever deposited money into a bank  
18 account for Johathan Canovas?

19 A. No.

20 Q. Have you ever accompanied anyone to deposit  
21 money into the bank account of Johathan Canovas --

22 A. No.

23 Q. -- at Bank of Guam?

24 Have you ever given money to anyone for the  
25 purpose of depositing money into the bank account of

1 Johathan Canovas?

2 A. No.

3 Q. Have you ever wired money from any account  
4 that you have to Johathan Canovas?

5 A. No.

6 Q. Have you ever given money to anyone to wire  
7 transfer via Western Union money to Johathan Canovas?

8 A. No.

9 Q. Have you ever given money to someone to  
10 deposit into a bank account for Christopher Espinosa?

11 A. No.

12 Q. Have you ever given money to anyone and  
13 instructed them to wire money to Christopher Espinosa?

14 A. No.

15 Q. Have you ever received packages in the mail  
16 from Johathan Canovas that contained controlled  
17 substances in them?

18 A. No.

19 Q. Have you ever received packages from  
20 Christopher Espinosa that contained controlled  
21 substances in them?

22 A. No.

23 (Pause.)

24 THE COURT: Let's take a morning recess, 15  
25 minutes.

1 (Recess was taken at 10:46 a.m.)

2 THE COURT: This your last witness?

3 MR. VAN DE VELD: Yes, Your Honor.

4 THE COURT: Do you anticipate any rebuttal?

5 MS. JOHNSON: Possibly, I'm not sure.

6 (The jurors are now entering the courtroom.)

7 THE COURT: Go ahead and be seated folks.

8 BY MR. VAN DE VELD:

9 Q. Brian, I'm showing you what's marked as  
10 Exhibit No. 7 and I'm directing your attention to the  
11 first page where it starts listing incoming telephone  
12 numbers.

13 Now, according to the chart these your phone  
14 calls with Eric Aponik, and on the first page it  
15 indicates several phone calls between you and Eric  
16 Aponik. Can you tell me whether or not that was  
17 something which was unusual?

18 A. No.

19 Q. Why?

20 A. Can you repeat the question again?

21 Q. Yes. It indicates --

22 MS. JOHNSON: Objection. Could counsel go  
23 back to the microphone? I can't hear him.

24 MR. VAN DE VELD: Okay.

25 Q. Take a look at the first page, it shows

1 telephone numbers, it shows telephone calls between you  
2 and Eric over the course of several days. Was that  
3 something which was unusual?

4 A. No.

5 Q. Why?

6 A. We -- we call each other all the time.

7 Q. And what would you call each other about?

8 A. Like what we would do after work or, you know,  
9 what we're doing, what he's doing, what I'm doing. I'm  
10 basically -- I just -- if I'm the one calling him it's  
11 because I'm bored, I sit there at work and like if  
12 there's nobody in the pool, I would just start calling.

13 Q. So you said and if you're at the pool and  
14 there's nobody in the pool and you're bored, you just  
15 start calling?

16 A. Yes.

17 Q. Was Eric the only one that you called or other  
18 people?

19 A. There's other people.

20 Q. Who else would you call?

21 A. I call Keomi, I call my cousins, I call my  
22 brother, family.

23 Q. Now, if you turn further into the exhibit  
24 there's another page that I've put a Post-It note flag  
25 on. What page is that?

1 A. Page 8.

2 Q. Okay. On there it indicates phone calls that  
3 came from Johathan Canovas; do you recall receiving  
4 those phone calls?

5 A. From Johathan Canovas?

6 Q. Yes.

7 A. Is that page 8?

8 MR. VAN DE VELD: May I approach, Your Honor?

9 THE COURT: Yes.

10 A. Or 7?

11 (Defense counsel went to the witness  
12 stand to help the witness.)

13 A. Okay.

14 Q. Do you recall receiving those phone calls?

15 A. I can't say.

16 Q. Okay. If you go back to the earlier pages  
17 there, it indicates, for example, a blocked telephone  
18 number, and then it will indicate a call, and the  
19 duration of the call; do you see that on the bill?

20 A. Yes.

21 Q. And do you know why it is that it reflects  
22 that?

23 A. No.

24 Q. Okay. Have you ever received a phone call  
25 where the sender on the cell phone doesn't want the

1 number that they're calling from to be shown?

2 A. Uh, yes.

3 Q. Okay. And when that happens, what does it  
4 show on your cell phone?

5 A. I believe blocked.

6 Q. But the phone call still appears on your bill  
7 for the time that you spent on the phone?

8 A. Yes.

9 Q. Is that correct? Also shown in the records in  
10 blue highlight are some phone calls from John Vincent  
11 Cruz; do you recall receiving those phone calls?

12 A. Yes.

13 Q. Okay. And when you received those phone  
14 calls, what conversations did you have with John Cruz?

15 A. He would ask me how would I -- how would --  
16 how is it that he would be able to get ahold of Eric  
17 Aponik.

18 Q. And what would you tell him?

19 A. I would just say try calling his house or his  
20 cell phone.

21 Q. Okay. Now some of the phone calls reflect  
22 that they would -- that they occurred during the  
23 daytime. So where would you have been when you  
24 received those phone calls, in let's say the months of  
25 October and November and December of 2004?

1 A. At work.

2 Q. And where would that have been?

3 A. Okura Hotel.

4 (Counsel approached the witness again.)

5 Q. Showing you what's marked as Exhibit 8, I've  
6 put a Post-It note with the time on it; would you  
7 please take a look at Exhibit 8 tell me when you've  
8 finished reviewing it?

9 A. Okay.

10 Q. Okay. Now, at the top of the exhibit is an  
11 indication of a deposit, and then there is this  
12 indication of telephone traffic below that. And you  
13 understand that's how the exhibit works, is that  
14 correct?

15 A. Yes.

16 Q. Okay. But the exhibit doesn't have the time  
17 on the day that the deposit was made reflected on it,  
18 so I've -- from the testimony of the Bank of Guam  
19 person, I've put a little Post-It note there for you  
20 indicating the time. Can you tell me the phone calls  
21 that are reflected in the exhibit immediately prior to  
22 and after the time shown on the little Post-It note?

23 A. (Pause to examine exhibit.)

24 10/13/04, 10:33 a.m., Eric Aponik -- from Eric  
25 Aponik through, to Brian Elm.



1 Q. Okay. That's at what time?

2 A. 10:33.

3 Q. Okay. And that's immediately after or before  
4 the time on the Post-It note?

5 A. After.

6 Q. Okay. And at that time, where would you have  
7 been?

8 A. At work.

9 Q. Okay. And the difference between the time of  
10 the deposit and the time of the phone call is how much  
11 time?

12 A. Four minutes.

13 Q. Okay. So, if you had been with Eric Aponik  
14 and given him the money to make the deposit, why would  
15 he need to call you within four minutes of it?

16 A. I wouldn't know.

17 Q. Okay. What about the phone call that's  
18 immediately preceding that?

19 A. Is that on 10-14?

20 MR. VAN DE VELD: May I approach, Your Honor?

21 THE COURT: Yes.

22 MR. VAN DE VELD: (Approaching the witness.)

23 Q. What's the time of the phone call that  
24 immediately precedes the time of the deposit?

25 A. 9:08 a.m.

1 Q. And who's calling who?

2 A. I'm calling Eric.

3 Q. Okay. Now, do you know what that -- can you  
4 recall what that phone call was about?

5 A. Just probably checking what we're going to do  
6 later on, in the evening.

7 Q. At that time you were employed where?

8 A. Okura.

9 Q. Okay. What are the hours of operation of the  
10 pool at the Okura Hotel?

11 A. From eight to six.

12 Q. From eight in the morning?

13 A. 8:00 a.m. to 6:00 p.m. Sometimes they open  
14 until seven.

15 Q. Okay. How early do people start actually  
16 using the pool?

17 A. Sometimes people would come down before that,  
18 but I'll be there, and I'll allow them to -- I'll be  
19 there earlier and I'll allow them to swim, because I'm  
20 there to monitor them.

21 Q. What are usually the boring parts of the day?

22 A. I'd say lunch time.

23 Q. So, you said that you had a phone call with  
24 Eric at around 9:00 o'clock, and you said you think  
25 that was about finding out what he was going to do?

1 A. Yes.

2 Q. Okay. How long did that phone call last?

3 A. (Pause.)

4 Q. Look at the record.

5 A. (Complies.) It doesn't show.

6 Q. Was that a call from your cell phone?

7 A. Yes.

8 Q. Look in Exhibit 7, see if that provides the  
9 duration of time.

10 (Pause to review records.)

11 A. One minute.

12 Q. Okay. And about how long would it take you to  
13 make a phone call to Eric to find out what's going on  
14 for that evening?

15 A. Before he answers the phone?

16 Q. No, how long would your general conversation  
17 be with Eric when you're calling him to find out what  
18 he's going to do for the evening?

19 A. One to two minutes.

20 Q. Okay. Show you what's marked as Exhibit 14.  
21 From the testimony of the Bank of Guam person I put the  
22 time of the deposits, which is 1403. Can you tell me  
23 the phone call which occurs immediately preceding that  
24 time on the date of the deposit?

25 A. 11:37 a.m.

1 Q. Okay. And what phone call is that?

2 A. I called Eric.

3 Q. Okay. And what is the phone call that occurs  
4 immediately after that?

5 A. 11:42 a.m.

6 Q. And who's calling who?

7 A. Eric called Canovas.

8 Q. Okay. How long was the phone call immediately  
9 preceding the deposit?

10 A. The phone call was at 11:42 and the deposit  
11 was at 1403, which is 2:03 in the afternoon.

12 Q. And the phone call that occurred beforehand at  
13 11:00, what was -- do you know what the length of that  
14 phone call was? Could you look at Exhibit 7.

15 A. (Pause to look at documents.)

16 30 seconds.

17 Q. Okay. Now, do you recall receiving that phone  
18 call?

19 A. No.

20 Q. Based on the duration of the phone call, do  
21 you have any idea what you might have been talking to  
22 him about?

23 A. No.

24 Q. Showing you what's marked as Exhibit 13,  
25 please take a look at this. Based on the information

Wanda M. Miles  
Official Court Reporter

1 from the person at Bank of Guam the deposit is at  
2 10:34, the date of the deposit is 12-23. Can you tell  
3 me what the phone call is in the telephone traffic that  
4 immediately precedes that date of call?

5 A. There's none on the 23rd.

6 Q. Just tell me the date that's reflected that is  
7 the call in chronology that first precedes the date of  
8 the deposit.

9 A. 12-21-04, 10:34 a.m.

10 Q. On what day?

11 A. The 21st.

12 Q. So, two days beforehand, is that correct?

13 A. Yes.

14 Q. Okay. And who's calling who?

15 A. I called Eric.

16 Q. Okay. Do you have any idea what that phone  
17 call may have been about?

18 A. No, not that I can recall.

19 Q. Okay. What about the phone call that  
20 immediately follows after that, can you tell us the  
21 date and time of the phone call that follows that?

22 A. 12-21-04, 10:36 a.m., Canovas to myself.

23 Q. Okay. Do you recall what that phone call was  
24 about?

25 A. No, I don't.

1 Q. And that -- was that the time day of the  
2 deposit?

3 A. No.

4 Q. How many days after the deposit?

5 A. It was about two days before the deposit.

6 Q. So, can you tell me the phone call that occurs  
7 after the deposit?

8 A. After the deposit was 12-24-04, Aponik to  
9 Brian Elm, myself.

10 Q. Okay. And do you know what that phone call  
11 was about?

12 A. No.

13 Q. Okay. And how long after the deposit was that  
14 phone call made?

15 A. Like a day.

16 Q. Like a day after?

17 A. A day.

18 Q. Showing you what's marked as Exhibit 12, and  
19 on Exhibit 12 from the information provided by the Bank  
20 of Guam person, I put 1521 p.m. as the time of the  
21 deposit shown at the top. Can you tell me the phone  
22 call that is reflected that precedes, immediately  
23 precedes the date and time of the deposit, please?

24 A. 11-24-04, 8:14 p.m.

25 Q. Now what is the time of the deposit?

1 A. The deposit was made on the 11-26, 1521, which  
2 was 3:21 p.m.

3 Q. Okay. So, how much time is there between the  
4 time of the phone call immediately preceding the  
5 deposit and the time of the deposit?

6 A. Two days.

7 Q. What's the next phone call that occurs after  
8 the deposit?

9 A. 11-24-04, 3:47 p.m.

10 Q. The date here.

11 A. Yes.

12 Q. So this, you said 24?

13 A. 11-27, 10:45.

14 Q. And that's from whom to whom?

15 A. That was from Eric Aponik to Canovas.

16 Q. Okay. So, do you have any knowledge about  
17 what that phone call was about?

18 A. No.

19 Q. And you said the one that immediately preceded  
20 that was on the 26th at?

21 A. 3:48.

22 Q. That would be -- this doesn't start -- you're  
23 wrong. Go back here, you've got 11-24, 8:14 p.m.; is  
24 that correct?

25 A. Yes.

1 Q. Okay. That's not the day of the deposit, it's  
2 a day and a half before that; is that correct?

3 A. Yes.

4 Q. Okay. Then the next call that's shown is on  
5 11-26-04 at 3:48 p.m., and that's from whom to who?

6 A. That was my myself to Aponik.

7 Q. Okay. And do you know what that phone call  
8 was about?

9 A. No.

10 Q. Okay. If you were with Eric at the time that  
11 he made the deposit, why would he have to call you  
12 within 20, 30 minutes after that?

13 A. I don't know.

14 Q. Okay. Do you recall what the content of that  
15 telephone conversation was about?

16 A. No.

17 Q. Showing you Exhibit 11, at the top of the  
18 document it shows 11-19-2004 as the date of the  
19 deposit, and from the testimony of the lady from the  
20 Bank of Guam, it was 10:54 a.m. Can you tell me the  
21 phone call that immediately precedes in the telephone  
22 traffic that date and time?

23 A. (Pause.) The first telephone call?

24 Q. If you take the date and time of the deposit  
25 transaction.



1 A. Oh, okay.

2 Q. The phone call that immediately precedes that  
3 date and time in the telephone traffic?

4 A. That would be 11-19-04, 10:08 a.m.

5 Q. And who's calling who?

6 A. Myself calling Aponik.

7 Q. Okay. And do you know what that phone call  
8 was about?

9 A. No.

10 Q. And what is the phone call that immediately  
11 follows after that deposit?

12 A. 11-19-04, 11:14 a.m.

13 Q. So what is the time difference between the  
14 time of the deposit and the time of the telephone call?

15 A. About say 20, 30 minutes.

16 Q. And who's calling who?

17 A. Myself calling Aponik.

18 Q. Okay. Do you recall what that phone call was  
19 about?

20 A. No.

21 Q. Showing you what's marked as Exhibit 9, date  
22 and time of the deposit transaction that's shown on the  
23 top is 11-6-2004, according to the person from the Bank  
24 of Guam it was 9:31 a.m. Can you tell me the phone  
25 call that immediately precedes in the chronology that's

1 shown this date and time?

2 A. 11-06-04, 9:22 a.m.

3 Q. How long before the deposit is that phone  
4 call?

5 A. Nine minutes.

6 Q. Okay. And who's calling who?

7 A. Aponik calling Canovas.

8 Q. Okay. Let's go to the phone call that  
9 precedes that phone call; what's the phone call shown  
10 just before that?

11 A. 11-5-05, 6:33 p.m.

12 Q. And who's calling who?

13 A. Aponik calling Canovas.

14 Q. So for the two phone calls preceding that  
15 deposit, one being the night before and one being in  
16 the morning, neither one of those involves you; is that  
17 correct?

18 A. That's correct.

19 Q. So do you have any knowledge about what those  
20 phone calls were about?

21 A. No, I don't.

22 Q. Okay. What's the next phone call following  
23 that deposit?

24 A. 11-6-05, 12:25 p.m.

25 Q. And who's calling who?

1 A. Canovas calling Elm, Brian Elm, me.

2 Q. Do you recall receiving that phone call?

3 A. No.

4 Q. Okay. Do you recall what that phone call  
5 might have been about?

6 A. No.

7 Q. Showing you what's marked as Exhibit 10, the  
8 date of the transaction shown on the exhibit is  
9 11-8-2004, the time of those deposits from the  
10 testimony of the Bank of Guam representative was 12:58  
11 p.m. Can you tell me in the telephone traffic which is  
12 listed the telephone call which immediately precedes  
13 the date and time of this deposit?

14 A. 11-8-04, 12:20 p.m.

15 Q. Okay, and who's calling who?

16 A. Myself calling Aponik.

17 Q. And how long in advance of the deposit was  
18 that?

19 A. About 20 minutes, 20, 30 minutes.

20 Q. Okay. And do you recall what that telephone  
21 call may have been about?

22 A. No.

23 Q. What's the phone call immediately after the  
24 deposit?

25 A. 11-8-04, 1:08 p.m.

1 Q. And who's calling who?

2 A. Aponik calling Elm.

3 Q. Okay. And do you recall what that telephone  
4 call was about?

5 A. No.

6 Q. Brian, what was the last grade of education  
7 you completed?

8 A. 11th.

9 Q. Where did you complete 11th grade at?

10 A. Guam Community College.

11 Q. And in your final semester of school, how many  
12 classes did you take?

13 A. Six.

14 Q. And what were your grades like?

15 A. Average.

16 Q. Well, can you be a little more specific about  
17 what you mean by average?

18 A. A "C", "C" average.

19 Q. The second to the last semester of high  
20 school, how many classes did you take?

21 A. About the same.

22 Q. Okay, about six classes?

23 A. Yes.

24 Q. And what were your grades like for those  
25 classes?

1 A. About a "C" average.

2 Q. Let's talk about tenth grade. What were your  
3 grades like in tenth grade?

4 A. Probably about the same.

5 Q. About a "C" average?

6 A. Yes.

7 Q. What about ninth grade?

8 A. "B", "C" average.

9 Q. Brian, have you ever run any businesses?

10 A. No.

11 Q. Have you ever worked in any kind of managerial  
12 capacity?

13 A. No.

14 Q. Have you ever been responsible for operating  
15 some business on your own, even though it's not yours?

16 A. No.

17 Q. How many times have you been in trouble with  
18 the law?

19 A. I'd say quite a few.

20 Q. Is that just as an adult?

21 A. No, when I was a minor.

22 Q. Tell me some of the things that you've gotten  
23 in trouble for.

24 A. When I was a minor I got in trouble for theft  
25 of a motor vehicle, riding a mo-ped without a driver's

1 license or helmet.

2 Q. What about as an adult?

3 A. In '95 I was arrested for possession of a  
4 controlled substance.

5 Q. What controlled substance?

6 A. Meth.

7 Q. And what happened?

8 A. I was sentenced to 21 months in federal  
9 prison.

10 Q. Did you go to trial?

11 A. No.

12 Q. How was it that you came to be sentenced by  
13 the court?

14 A. I pled guilty.

15 Q. Why did you plead guilty?

16 A. Because I was guilty for the possession.

17 Q. What about after that?

18 A. In 2003 I was arrested for possession, and  
19 unregistered firearm.

20 Q. And what happened with that case?

21 A. I pled guilty.

22 Q. And why did you plead guilty?

23 A. Because I was responsible for the possession  
24 and the firearms.

25 Q. And any other times that you've gotten in

1 trouble with the law besides 1995 and 2003?

2 A. Not that I can recall.

3 Q. Now, you are charged in this case; why haven't  
4 you pleaded guilty?

5 A. Because I'm not involved.

6 Q. What do you mean by you're not involved?

7 A. I just -- I didn't have anything to do with  
8 this.

9 Q. You heard the testimony of your cousin  
10 Jarrett, he says he would come to the warehouse and  
11 find you smoking; is that true or not true?

12 A. That's not true.

13 Q. Is there anything that you think would show  
14 that why, when you deny that you weren't smoking, that  
15 that's true?

16 A. I wouldn't -- I wouldn't smoke.

17 Q. Were there certain things that were occurring  
18 that you were required to do that you think show that  
19 you weren't using ice?

20 A. Yes.

21 Q. What is that?

22 A. Taking random urine, urinalysis tests,  
23 testing.

24 Q. Ms. Johnson points out that starting in about  
25 September of 2004, that the tests were somewhat about

1 two weeks apart. Were you aware of that at that time?

2 A. No.

3 Q. Were you able to anticipate when you would be  
4 called in?

5 A. No.

6 Q. So, did you think you could use ice and get  
7 away with it?

8 A. No.

9 Q. You've testified about owning two different  
10 motorcycles. How many motorcycles in all have you  
11 owned over the last several years?

12 A. Three.

13 Q. What was the other one that you owned?

14 A. A 19 -- or a 2001 Yamaha YZFR1.

15 Q. And where did you get that one from?

16 A. John Dudkiewicz.

17 Q. Did you register in your name the ownership of  
18 the white 4Runner?

19 A. No.

20 Q. Why do you think Eric Aponik has said the  
21 things that he has said about you in this case?

22 A. I really don't know.

23 Q. Did you call your sister Verlyn?

24 A. Yes.

25 Q. How many times did you call your sister Verlyn



1 while you were confined?

2 A. About less -- less than 10 times.

3 Q. And when you called her, what did you talk to  
4 her about?

5 A. About the kids and I asked her how she's  
6 doing, and stuff like that.

7 Q. Now, you heard your sister testify that during  
8 the last telephone call you made to her, you asked if  
9 Eric was really going to follow through with what it is  
10 that he was going to testify about; do you recall her  
11 testimony about that?

12 A. Yes.

13 Q. Why did you -- first of all, did you actually  
14 ask her that?

15 A. Yes, I think so.

16 Q. Why did you do that?

17 A. I just wanted to know if he was really going  
18 to go through with it, and you know, how he could do  
19 that to me.

20 Q. When you say how he could do that to you, what  
21 do you mean?

22 A. I mean in the earlier calls I would ask him,  
23 you know, why he had said the things he said, and he  
24 just said, oh, he didn't say it.

25 Q. So he told you he didn't say what, what led to

1 the charges against you in this case?

2 A. No.

3 Q. Are you -- are you disappointed by the fact  
4 that Eric has said these things about you?

5 MS. JOHNSON: Objection; leading question.

6 THE COURT: Overruled.

7 (Pause while defendant composed himself.)

8 BY MR. VAN DE VELD:

9 Q. How do you feel about Eric having said these  
10 things about you?

11 A. It really hurts to think that he can do that,  
12 say these stuff that aren't true about me.

13 Q. And how do you feel about what Jarrett has  
14 said about you?

15 A. It hurts.

16 Q. Why?

17 A. My own cousin, to lie about me.

18 Q. Brian, people say that you're a mastermind of  
19 criminal activity; what would you say is the truth of  
20 those allegations?

21 A. I'd say it's not true.

22 Q. Why do you say that?

23 A. Because I'm changed, I just -- I just want to  
24 get past, through this so I can be with my family.

25 Q. In the previous two times that you've been

1 arrested and you had ice on you, were you dealing ice  
2 at those times?

3 A. No.

4 Q. Have you ever dealt ice in the past?

5 A. Yes.

6 Q. How long ago?

7 A. 11 years ago.

8 Q. And when you were dealing ice 11 years ago,  
9 where did you get the ice from?

10 A. From Duane Calvo.

11 Q. Was that from Guam or from some place outside  
12 of Guam?

13 A. From Guam, in Guam.

14 Q. During the period of time that you were living  
15 with Keomi at the end of 2004, and you were assisting  
16 her with paying the bills, how would you describe your  
17 finances, your financial condition at that time?

18 A. It was -- it wasn't bad, it was okay.

19 Q. Did you have a lot of money?

20 A. No.

21 Q. Did you own a lot of toys?

22 A. No.

23 Q. When you took the rims off of Keomi's car and  
24 put the new ones on that you gave her as a gift, did it  
25 cost you anything to take those rims then and put them

1 on the white 4Runner when you bought it?

2 A. No.

3 Q. The used ones?

4 A. No.

5 Q. Why?

6 A. It was just like a swap off, even swap off.

7 Q. Okay, so when you put the brand new ones on  
8 that you gave her as a gift, those cost you money, is  
9 that right?

10 A. Yes.

11 Q. But the ones that you took off of there, she  
12 already owned them; is that right?

13 A. Yes.

14 Q. And then when you transferred them on to the  
15 white 4Runner, did you do that work yourself?

16 A. I remember Eric had helped me in doing that.

17 Q. Okay. So it didn't cost you any money?

18 A. No.

19 Q. Have you ever made any kind of a wire transfer  
20 to anyone in your lifetime?

21 A. No.

22 Q. Have you ever been to a Western Union  
23 facility?

24 A. No.

25 Q. Do you know how you make a wire transfer?

1 A. No.

2 Q. Now, do you know how long Eric has run his  
3 parents' business?

4 A. I'm not sure.

5 Q. Well, how long have you known him that he's  
6 been running the business?

7 A. I'd say within the last two, three years.  
8 Three years.

9 MR. VAN DE VELD: I have nothing further.

10 THE COURT: All right. Cross-examination.

11 MS. JOHNSON: Yes, Your Honor.

12 If I may approach the witness?

13 THE COURT: Very well.

14 MS. JOHNSON: These have been marked Exhibits  
15 31, 32, and 33.

16 **CROSS-EXAMINATION**

17 BY MS. JOHNSON:

18 Q. Mr. Elm, can you take a look at Exhibits 31 --  
19 Exhibit 31; is that your true name on that document?

20 A. Yes.

21 Q. Yes? Is that you?

22 A. Yes.

23 Q. Exhibit 32, is that your name?

24 A. Yes.

25 Q. Is that you?

1 A. Yes.

2 Q. And Exhibit 33, is that your name?

3 A. Yes.

4 Q. Is that you, are you the subject of that?

5 A. Yes.

6 MS. JOHNSON: I'd offer 31, 32, and 33.

7 MR. VAN DE VELD: Without objection, Your  
8 Honor.

9 THE COURT: They'll be admitted.

10 BY MS. JOHNSON:

11 Q. Mr. Elm, you've just told this jury under oath  
12 that when you were found in possession of ice, or meth  
13 as you call it, in 1995, you pled guilty to possession  
14 and did 21 months in a federal penitentiary; is that  
15 true?

16 A. I pled guilty to distribution.

17 Q. In fact, you did plead guilty to distribution,  
18 didn't you?

19 A. Yes.

20 Q. You told this jury that you got that ice from  
21 Duane Calvo; is that right?

22 A. Yes.

23 MS. JOHNSON: Let me mark this as Exhibit 34,  
24 for reference purposes.

25 Q. Do you remember the plea agreement you entered

1 into when you pled guilty to distribution?

2 A. I don't remember it.

3 MS. JOHNSON: May I approach the witness, Your  
4 Honor?

5 THE COURT: Yes.

6 MR. VAN DE VELD: May I see the document  
7 first, Your Honor?

8 (Government counsel gives document to  
9 defense counsel to review.)

10 BY MS. JOHNSON:

11 Q. I want to call your attention to Page 4, ask  
12 you to review this.

13 A. (Pause to review document.)

14 Q. Does that refresh your recollection about the  
15 plea agreement you entered into when you pled guilty to  
16 distribution?

17 A. Yes.

18 Q. In fact, you said you'd gotten that ice from  
19 Mai Lien Lee, didn't you?

20 A. Yes.

21 Q. Not from Duane Calvo.

22 A. My mistake.

23 Q. Were you also dealing ice you got from Duane  
24 Calvo?

25 A. Yes.

Wanda M. Miles  
Official Court Reporter

1 Q. So you had more than one source of ice?

2 A. Yes.

3 Q. When you look at Exhibit 31, is that the  
4 conviction that you got in the Superior Court?

5 A. Yes.

6 Q. And you were arrested on that charge on  
7 September 16 of '03, weren't you?

8 A. Yes.

9 Q. And at the time you were down in Tumon by the  
10 church, isn't that true?

11 A. Yes.

12 Q. And remember when you talked to the officer,  
13 you told him that you were going home?

14 A. Yes.

15 Q. But you lived in Barrigada, right?

16 A. Yes.

17 Q. Do you remember him asking why you were in  
18 Tumon if you lived in Barrigada?

19 A. Yes.

20 Q. And what did you tell him?

21 A. I said I was looking for my wallet I had lost.

22 Q. You were looking for?

23 A. My wallet.

24 Q. And what time was it in the morning?

25 A. About three.